

NTSB Order No.  
EM-80

UNITED STATES OF AMERICA  
NATIONAL TRANSPORTATION SAFETY BOARD  
WASHINGTON, D. C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D. C.  
on the 23rd day of May 1980.

JOHN B. HAYES, Commandant, United States Coast Guard,

vs.

GEORGE H. McDONALD, Appellant.

Docket No. ME-77

OPINION AND ORDER

Appellant seeks reversal of the Commandant's decision affirming the suspension of his license No. 446420. The Commandant also sustained findings that appellant's negligence in piloting the SS PHILLIPS WASHINGTON had resulted in capsizing and sinking the tug TONY ST. PHILIP in Tampa Bay, Florida, on March 27, 1977.

Appellant had appealed to the Commandant (Appeal No. 2158) from the initial decision of Administrative Law Judge Michael E. Hanrahan, entered after a full evidentiary hearing.<sup>1</sup> Throughout the proceedings, appellant has been represented by counsel.

The law judge found that the tug was assisting appellant's vessel which had grounded on the west side of Cut "F" Channel in Tampa Bay during an outbound transit; that the vessel was brought off ground in a stern-first direction as the tug pulled on a towing hawser secured to the vessel's stern and another tug - the GLORIA ST. PHILLIP - pushed on the vessel's port quarter; that appellant then ordered the tug captain aboard the TONY ST. PHILIP to release its hawser and to let him know when the tug was clear; but that before receiving word from the TONY's captain or ascertaining that the hawser had been let go, appellant ordered the vessel's engines put full ahead; and that the force of the wheelwash from the vessel's propellers together with the hawser being pulled in the opposite direction "caused the tug to lay over on her side and sink" (I.D. 8). Although Appellant also gave an order to the second mate on the vessel to have the TONY's line released, it was not

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<sup>1</sup>Copies of the decisions of the Vice Commandant (acting by delegation) and the law judge are attached. 33 CFR 1.01-40.

carried out in a timely fashion.<sup>2</sup> The law judge concluded that appellant was negligent in proceeding full ahead without verifying whether the tug's line was still made fast to his vessel's stern. There was no loss of life and the law judge considered the "continual strain" of efforts to refloat the vessel taking several hours, the inadequate line handling by the vessel's crew, and appellant's good prior record as mitigating factors in assessing sanction. He thereupon ordered a 1-month suspension of appellant's license in addition to a suspension of 4 months on probation.<sup>3</sup>

In his brief on appeal, appellant disputes the finding concerning his request to be notified when the tug was clear. He further contends that the crew of the PHILLIPS WASHINGTON had ample time to release the tug's hawser, and that he cannot be held negligent for the crew's failure to act competently.<sup>4</sup> Counsel for the Commandant has contested these issues in a reply brief.

Upon consideration of the briefs and the entire record, we conclude that appellant's negligence was established by reliable, probative, and substantial evidence. The findings of the law judge, as modified by the Commandant,<sup>5</sup> are adopted as our own. Moreover, we agree that the sanction is warranted.

Appellant argues that the disputed finding is based on testimony from the tug captains which contains a discrepancy. The captain of the GLORIA ST. PHILLIP testified that he overheard the radioed instruction from appellant to the TONY's captain to let go and his further request for notification when the tug was clear, and they were separate transmissions. Although appellant claims that the TONY's captain testified to simultaneous transmissions,

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<sup>2</sup>The second mate relayed the order to a seaman at the stern who responded, shortly afterwards, that the tug had sunk (Tr. II 6).

<sup>3</sup>The sanction is stayed pending disposition of this appeal. 46 CFR 5.30-35(d).

<sup>4</sup>No appeal is taken from the Commandant's adverse holding on appellant's various claims of prejudice in connection with the Coast Guard's investigation of the casualty, the prior scheduling of the master's hearing at which he testified concerning a separate charge arising from the casualty, and the fact that both cases were heard before the same law judge.

<sup>5</sup>A finding in which the law judge assumed that was aware of an earlier difficulty with the vessel's crew in handling lines from the tugs was dismissed by the Commandant (C.D. 14).

the record discloses no such discrepancy. The TONY's captain described a series of transmissions in which he advised appellant that the vessel's stern was "getting fairly close" to the opposite bank of the channel and was, in turn, told to let go; he responded that the tug "would have to get behind the ship" in order to put slack in the line; and was told by appellant, in turn, to "let him know" when the tug was clear (Tr. 96). It should be obvious that he was referring to separate transmissions as indicated by the GLORIA's captain (Tr. 126). The latter did not, as is claimed, testify to a 50-second interval between the transmissions, but that "around 50 seconds" were taken by the TONY to maneuver into position for release of its hawser astern of the vessel. We find no conflict in their testimony.

Appellant also argues that the master and second mate of the vessel and two deckhands on the TONY ST. PHILLIP did not hear the disputed transmission. The master was stationed on the port wing of the bridge and did not hear any of appellant's orders to the tugboats at this time (Tr. 68, 77). The second mate was not called as a witness and the record contains only a portion of his testimony in the Coast Guard investigation of the casualty, which was admitted by stipulation. This concerned the order he received from appellant to release the TONY's hawser (Tr. II 6-12) but contains nothing with respect to the transmissions in question. It further appears that the deckhands went to the aft deck of the tug as soon as they heard the order to let go (Tr. 137, 149). They were about 60 feet away from the pilothouse where the radio was located (Tr. II 57), which would account for their failure to hear a subsequent transmission. We also note that appellant did not deny making the second transmission but testified only that he did not recall doing so (Tr. II 35). Neither his lack of recall nor the absence of testimony from witnesses who were not within hearing distance or were not questioned on the matter would tend to discredit the tug captains. Accordingly, we are presented with no grounds for reversing the finding which concerns appellant's request for notification when the TONY was clear of his vessel, and that finding is affirmed.

Appellant's contention that competent line handling by the crew of the PHILLIPS WASHINGTON would have prevented the casualty is supported to some extent in the record. When the TONY backed into position, there was no one from the vessel's crew standing by to cast off its line. Whistle signals were blown by the tug captain but to no avail. He then left the pilothouse and joined the deckhands who were "hollering to get let go and getting no response" (Tr. 116). Certainly appellant bears no responsibility for this failure on the part of the vessel's crew to be vigilant at the critical time.

Meanwhile, appellant had made two observations from the port wing. He first saw the TONY "backed up to the port quarter of the ship with its line slack in the water", and when he looked again the tug was gone. (Tr. II 30-31). In discussing the situation with the master on the port wing, he stated that he was ordering slow ahead, and the master cautioned him to be careful "because he still had the tugs made fast" (Tr. 67-68). Nevertheless, appellant gave the order for slow ahead. Since the vessel still had "good sternway", he ordered engines full ahead 15 of 20 seconds later (Tr. II 31).

Appellant argues that this action was necessary to avoid grounding the vessel on the opposite bank. The reasons for his concern are apparent, given the vessel's length of 492.9 feet and the restricted width of Cut "F" Channel (400 feet), and the danger of a stern-first grounding which might have damaged the rudder and propeller of the vessel.<sup>6</sup> But this exigency cannot justify a disregard for the consequences if, as it turned out, the TONY's hawser was not released, jeopardizing not only the tug's safety but the lives of its crew.

Although it appeared that sufficient time had elapsed, appellant had no knowledge of the delay caused by the tug captain's inability to raise anyone on the vessel to perform the line handling task. His assumption that the tug was clear because it had disappeared from view was not reasonable in light of the information he received from the TONY's captain that the tug would be moving behind the vessel's stern to have its hawser released. Since he had committed himself to await confirmation from the TONY's captain, the latter could not have anticipated appellant's sudden decision to move the vessel full ahead when he took additional time in attempting to have the hawser released from the vessel rather than his tug.<sup>7</sup> If appellant had adhered to the original plan of operation, the casualty would not have occurred. We find no justification for his abrupt decision to take matters into his own hands without verification from the tug captain or anyone else that the TONY ST. PHILLIP was safely out of danger. In our view, he failed to exercise that degree of care which would be expected of a reasonably prudent ship's pilot under like

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<sup>6</sup>The master testified, however, that he "didn't think it was that serious.... The rudder or wheel may be involved. This is what you try to avoid. But with two tugs there, sometimes it's pretty easy, on a light tanker" (Tr. 88).

<sup>7</sup>Although the hawser could have been let go from the tug, he preferred taking it in on the tug's deck (Tr. 116).

circumstances, which constitutes negligence.<sup>8</sup>

ACCORDINGLY, IT IS ORDERED THAT :

1. The instant appeal be and it hereby is denied; and

2. The orders of the Commandant and the law judge suspending appellant's license No. 446420 for 1 month, plus a probated suspension of 4 months, be and they hereby are affirmed.

KING, Chairman, DRIVER, Vice-Chairman, McADAMS, GOLDMAN, and BURSLEY, Members of the Board, concurred in the above opinion and order.

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<sup>8</sup>Negligence is defined, in pertinent part, by Coast Guard regulation as "the commission of an act which a reasonably prudent person of the same station, under the same circumstances, would not commit, or the failure to perform an act which a reasonably prudent person of the same station, under the same circumstances, would not fail to perform." 46 CFR 5.05-20(a)(2).